

# **On Non-Moro Indigenous People's Rights (Mindanao) : Confidential unsolicited advice memo for selected MILF leaders**

Friday 7 June 2024, by [SANTOS Soliman, Jr](#) (Date first published: 7 January 2015).

**Due to a sense of urgency regarding the proposed BARMM IP Code (the Bangsamoro Indigenous Peoples Development Act of 2024) AND also the armed violence & killings affecting the Teduray-Lambangian tribe & other non-Moro IPs in the now 2 Maguindanao provinces, and for lack of material time on my part to comment in a more focused & updated manner on the proposed BARMM IP Code, I feel a sense of duty, as a longtime independent civil society peace advocate of the Mindanao peace process, to now "declassify" for publication or otherwise posting my ATTACHED 9-page 7 January 2015 Confidential Unsolicited Advice Memo to Selected MILF Leaders RE: *"It's in the MILF's interest to accommodate IPRA in the Bangsamoro, if not the BBL"* that hopefully would help contribute to a just resolution of Lumad fears losing their ancestral lands and tribal leaders due to conflicting ancestral domain claims with the MILF. Thank you & best wishes – Judge Soliman M. Santos, Jr., (Retd.) [6 June 2024]**

## Contents

- [Legal Aspect](#)
- [Political Aspect](#)
- [Moral Aspect](#)

## **CONFIDENTIAL UNSOLICITED ADVICE MEMO FOR SELECTED MILF LEADERS**

FOR: Chairman Al-Haj Murad Ebrahim, Sheikh Omar Pasigan, Chairman Mohagher Iqbal

FROM: Judge Soliman M. Santos, Jr.

RE: **It's in the MILF's interest to accommodate IPRA in the Bangsamoro, if not the BBL**

DATE: 7 January 2015

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This Memo is confidentially and purposively addressed to only you above-named MILF leaders, given the sensitivity of some points, to show why (and hopefully also how) it is in the MILF's interest to accommodate the IPRA in the new Bangsamoro entity, if not in the BBL itself. I shall discuss this as succinctly as possible in **three aspects**: (1) Legal, (2) Political, and (3) Moral. Forgive me if I at times argue strongly or even forcefully but in any case respectfully (and hopefully also "tastefully"), given the time imperatives of the BBL situation and the MILF's known strong position on the matter, which I respect even as I disagree with it. This Memo deals with one particular brewing flashpoint in

the Congressional deliberations and public discourse on the proposed BBL: the **IP concern** for clarity and assurance that their tribal identities, ancestral domains, self-determination and other rights, as well as gains particularly in the IPRA, are preserved in the passage of the BBL.

This would entail any of these **possible alternative options**: (a) the IP-preferred explicit guarantee in the BBL of the IPRA's applicability in the new Bangsamoro entity; (b) a non-explicit guarantee of the same outside the text of the BBL but in the legislative record, particularly coming from the MILF; and/or (c) the adoption or incorporation by reference in the BBL of key provisions of the IPRA but without mentioning it. Whatever option taken, it would definitely be in the best interest of Moro-IP unity that there is **mutual understanding, if not agreement**, on it between the leading/credible representatives of both "sides." Rightly or wrongly, the IPs view or perceive the IPRA as the primary means of safeguarding their all-important ancestral domains, especially its provisions for delineation and titling of the same. On the other hand, the MILF has its own strong critique of and thus grave reservations about the IPRA, as basis for its strong position of excluding any reference to the IPRA in the BBL and consequently excluding the IPRA's application in the new Bangsamoro entity. I shall try to engage this MILF position in the course of the discussion in this Memo. I leave it then to you above-named MILF leaders whether to share this Memo with the rest of its Central Committee, if not also with the MILF's good lawyers.

## Legal Aspect

The main premise of this part of the Memo is the existing constitutional framework that governs the BBL. The discussion would be different if we were speaking of proposed constitutional amendments rather than this proposed legislation.

**1. The BBL seriously risks being stricken down as UNCONSTITUTIONAL to the extent that it is found to be inconsistent with the IPRA, I would say both in letter and in spirit.** The BBL's non-reference to IPRA makes it more vulnerable in that sense. Please review the Supreme Court (SC) Decision on the MOA-AD. The main Decision found the MOA-AD not only "irreconcilable with the Constitution" but also "inconsistent with prevailing statutory law, among which [is]... the IPRA. Note that it found this in particular: "Respecting the IPRA, it lays down the prevailing procedure for the delineation and recognition of ancestral domain. The MOA-AD's manner of delineating the ancestral domain of the Bangsamoro people is a clear departure from that procedure." (underscoring in the SC Decision) And then it quoted extensively the IPRA's Sec. 52 on the "Delineation Process," thus thereby practically giving it constitutional status or protection.

The very strong Separate Concurring Opinion of Senior Associate Justice Antonio T. Carpio (who is a very influential No. 2 in the SC) emphasized the MOA-AD's "Violation of Constitutional Rights of Lumads [yes, using this term]" by citing the MOA-AD's "Concept and Principles" paragraph 1 defining the Bangsamoro people - which is not very different from the definition in the proposed BBL, Art. II, Sec. 1. Justice Carpio described the MOA-AD definition as "cultural genocide" for having "**erased their** [the Lumads'] **identity** as separate and distinct indigenous peoples" and that it also "divests the Lumads of their ancestral domains." He then summed up his discussion this way: "The incorporation of the Lumads, and their ancestral domains, into the Bangsamoro violates the Constitutional and legislative guarantees recognizing and protecting the Lumads' distinct cultural identities as well as their ancestral domains. The violation of these guarantees makes the MOA-AD **patently unconstitutional.**" (boldface type in the SC Decision) Note the reference to the Lumads'

“ancestral domains” in the plural (with an “s”).

Incidentally, the incumbent Chief Justice Maria Lourdes P.A. Sereno was the counsel of Sen. Franklin M. Drilon who then both argued most strongly and effectively (in the case of then Atty. Sereno) against the MOA-AD before the SC. Another new member of the SC is Justice Marvic M.V.F. Leonen who was the GPH panel chair who successfully negotiated the FAB but, because of this, he will likely inhibit himself from voting in any expected constitutionality suit on the BBL. But he has expressed, in so many words, concerns about the BBL not running over the IPRA, the constitutionality of which he successfully defended in the SC when he headed the NGO the Legal and Natural Resources Center (LRC) – incidentally now a support NGO for the IPRA-into-the-BBL advocacy of the main Teduray-Lambangian-Dulangan Manobo and Erumanen ne Menuvu organizations.

2. **The MILF’s public statements**, including through its *Luwaran* editorials, particularly on the issue of ancestral domain (in the singular, without an “s”) in the Bangsamoro, **provide ammunition for unconstitutionality attacks against the proposed BBL**. There is in particular the statement that “The MILF consistently staved off attempts – and succeeded – in excluding the application of this conceptual legal framework [referring to IPRA] in the Bangsamoro.” This is aggravated by the MILF’s ensuing statement that “As far as the CAB is concerned, there is only one ancestral domain in the Bangsamoro... If outside of the Bangsamoro, the concept of ancestral domain is more tribal in application, here it is elevated to a more national character, because the term ‘Bangsamoro’ becomes an identity, similar or at par with ‘Filipino.’ Both are national identities.”

I already pointed out the constitutional or SC recognition of IP ancestral domains and this (just like the Constitution and national laws) applies both outside and inside the Bangsamoro territory. The SC, if not the whole Philippine government (as distinguished also from the Aquino administration), cannot recognize the MILF’s concept of one Bangsamoro ancestral domain that is contrary to the existing constitutional concept of ancestral domain which is basically that as defined in the IPRA. The commentaries of constitutionalist and 1986 Constitutional Commissioner Fr. Joaquin G. Bernas, S.J. (which I will no longer cite here in detail) are along this line. This line may be “too narrow and restrictive” but that is the line for now, until there is relevant charter change.

On the matter of two national identities, Filipino and Bangsamoro, this is not dependent, at least not primarily dependent, on ancestral domain. There is a Filipino national identity even if there is no Filipino ancestral domain to speak of. Given the clash between the Philippine constitutional and the MILF’s concepts of “ancestral domain,” I hope it is not presumptuous of me to **suggest alternative terms** which the MILF has used anyway like in the MOA-AD: “Bangsamoro homeland” or “Bangsamoro ancestral territory (from “ancestral territoriality”). As for the beyond-the-surface/top-soil natural resources aspects of the Bangsamoro homeland or ancestral territory, as well as of the IP (including the Islamized IPs) ancestral domains, let that be dealt with for now as matters mainly of wealth sharing and revenue generation. All these, until there can be charter change that would accommodate new concepts of ancestral domain.

3. **That the proposed BBL provides for Bangsamoro Government “exclusive powers” over “Ancestral domain and natural resources” does not negate the applicability of the IPRA** for the IPs within the Bangsamoro territory. First of all, that provision of “exclusive powers” is of doubtful constitutionality under the unitary system of government of the Philippines. Secondly, the BBL would be “subject to the provisions of this Constitution and national laws” under Art. X. Sec. 20 of the Constitution. And there is an existing constitutional and prevailing statutory law framework governing ancestral domain and natural resources. For example, other matters like “Barter trade and countertrade with ASEAN countries” or “Contract loans, credit, and other forms of indebtedness with any government” are also listed under “exclusive powers” of the Bangsamoro Government in

the proposed BBL but surely these matters with foreign affairs implications will have to involve the national government under the unitary system of government of the Philippines.

Similarly, the MILF argument “oppos[ing] any direct reference to the IPRA in BBL” that “the Organic Act for the ARMM has already given it the power and jurisdiction over ancestral domain and natural resources” does not negate the applicability of the IPRA for the IPs within the Bangsamoro territory. There is nothing in the two ARMM Organic Acts RA 6734 and RA 9054, and for that matter in the IPRA, that would exclude the latter’s application in the ARMM. On the other hand, in the IRR for the IPRA, particularly the Rule XIII, Sec. 1, first sentence in fact states that: “The provisions of this Act relating to the civil, political, social and human rights and those pertaining to the identification, delineation, recognition, and titling of ancestral lands and domains are applicable throughout the entire country.” (underscoring supplied)

That the NCIP, with authority for delineation and titling of IP ancestral domains, was not devolved by the national government to the ARMM, leaving it only with the old OSCC without such authority, again does not negate the applicability of the IPRA for the IPs within the Bangsamoro territory. That non-devolution was more a function of the lack of political will, IPRA status un-clarity and other problems in the implementation of the IPRA in the ARMM. Nonetheless, in 2003 the ARMM RLA passed Resolution No. 269, after which the NCIP and the ARMM Regional Governor signed a MoU to make IPRA the legal framework for IP rights until the ARMM passed its own legislation. In 2008, the RLA passed Muslim Mindanao Autonomy (MMA) Act No. 241 which reaffirmed the policies on IPs set out in national legislation (inc. IPRA) and international law (inc. UNDRIP). But quite belatedly, only early this year (2014), the NCIP came up with a resolution that the legalities over the issuance of ancestral domain titles were resolved, and the Teduray-Lambangian-Dulangan Manobo tribes started delineation proceedings over their unified ancestral domain claim in the ARMM. Will the MILF thru the BBL, the BTA and the Bangsamoro Government now reverse this progress or, for that matter, what in effect are also “vested property rights”? Should the MILF not instead show that the new Bangsamoro entity, in replacing the ARMM, can also replace its shortcomings in providing an enabling rather than hindering environment for the identification, delineation, recognition, and titling of IP ancestral lands and domains in its territory? In other words, can it not show in this way that it can do for the IPs what the national government and the “failed experiment” ARMM has failed to do? That was not of course the MILF’s fault but now some power and therefore responsibility is going to be shared with it. Will it be any different in the new autonomous political entity?

4. The MILF has argued that “IPRA’s application in the future Bangsamoro entity has never been agreed as part of signed documents, especially in the CAB” and that this “is the limit of what should be in the BBL.” **While it may be true that “IPRA’s application in the future Bangsamoro entity has never been agreed... in the CAB,” this cannot limit the plenary legislative powers of Congress** under the Constitution which is the only mandatory limit for legislation by Congress. That goes without saying regarding legislation as a constitutional process. And the MILF has taken its leap of faith in this process by agreeing that “The President shall submit the proposed Basic Law to Congress as a legislative proposal.... [to be] enacted by Congress.” While Congress should fully understand that the proposed BBL was a culminating result of long and difficult peace negotiations and was drafted by the BTC “using as bases the FAB and its annexes,” Congress also has its own parameters, mainly the Constitution. And these main parameters for the enactment of an organic act of autonomous regions under the Constitution’s Art. X, Secs. 15 & 20 are that it be “within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines” and “within its territorial jurisdiction and subject to the provisions of this Constitution and national laws.”

5. Some argue sympathetically to or in understanding of **the MILF position as a revolutionary organization that it simply does not make explicit references to any national law. That is**

**not necessarily true, because it has in fact done so** in several peace process-related documents, including the proposed BBL. The latter makes explicit reference to, including by adopting certain provisions of, several national laws like the two ARMM Organic Acts RA 6734 and RA 9054, and PD 1083, an un-repealed dictator Marcos presidential decree on the Code of Muslim Personal Laws of the Philippines, some provisions of which had even been critiqued by a Mindanao Islamic scholar as “un-Islamic.” So, why not the IPRA, which is considered a most progressive legislation, even antedating the UNDRIP?

After all, **the IPRA was also listed along with RA 6734 and RA 9054 as among a number of Terms of Reference in the MOA-AD.** It may be argued that *such Terms of Reference are in the nature of consensus points.* In this regard, note this paragraph from peace document No. 5 that is an integral part of the CAB, the “Declaration of Continuity for Peace Negotiation” dated 3 June 2010: “In reframing the consensus points on Ancestral Domain, respect the existing property and community rights taking into account in particular the rights of indigenous people in the accordance with the UN Declaration on the Rights of Indigenous Peoples.” (underscorings supplied) It may be argued that “existing property and community rights” of the IPs include the first bundle of “Rights to Ancestral Domains” under the IPRA, which national law was pre-existing the international law that is the UNDRIP. And so, even if the peace documents do not make any direct reference to the IPRA (but the MOA-AD does), it can be argued credibly that there is an indirect reference to it in the CAB which is in turn the avowed basis for drafting the BBL.

**6. The MILF argues that “the IPRA is for the IPs, while the BBL is for the Bangsamoro” as if the IPRA/IPs and the BBL/Bangsamoro are mutually exclusive but they are not.** No, it is not “as simple as that.” One basic rule of statutory construction (legislative interpretation) is to **as much as possible harmonize or reconcile** laws with each other. The BBL and the IPRA can be harmonized or reconciled under the existing constitutional framework by acknowledging that the IPRA is “applicable [for IPs] throughout the entire country,” including in the new Bangsamoro entity. For the MILF to say that “the IPRA is for the IPs, while the BBL is for the Bangsamoro” is dangerous, even from the MILF or Bangsamoro viewpoint, on several counts. Like, is the MILF admitting that the IPs are really separate and distinct from the Bangsamoro? Or is the MILF saying that there are no IPs, only Moros, in the new Bangsamoro entity? So, are IP tribal identities there indeed being subsumed under the Bangsamoro national identity? Is the MILF denying to the Islamized IPs like the Maguindanao, Maranaw, Tausug, et al. whatever benefits from the IPRA to them as IPs? The MILF says, “By the way, Moros are also indigenous” – so, what then applies to them, the IPRA (because they are indigenous) or the BBL (because they are Moros)? Should it not be both the BBL and IPRA?

**7. The MILF says that “While there is no direct mention of IPRA in the proposed BBL, but all the essential elements including the four bundles of rights are in it; in fact, there are ‘more plus, plus’.”** The MILF then gives its several (four in the *Luwaran* 25 October 2014 editorial on the “BBL and IPRA”) reasons in opposing any direct reference to the IPRA in the BBL, and I am addressing, if not rebutting, these reasons in various parts of this Memo. Let me address just at this point the MILF argument that the BBL need not make direct mention of the IPRA since “all [its] essential elements including the four bundles of rights are in it; in fact, there are more.” **Among the essential elements of the IPRA is the delineation and titling of the ancestral domains of the IPs. But these - delineation, titling, ancestral domains (plural) - are precisely what the MILF avows to have successfully excluded from the proposed BBL.** This appears to be the root of its opposition to any direct reference to the IPRA in the BBL. There is, however, **a general principle in law and equity on the non-diminution of established rights and benefits** (stated otherwise and simply, you can add “more plus, plus” but cannot subtract). That the IPs wish to preserve these hard-won gains of their struggle is both reasonable and legitimate. And in their

perception the primary means of safeguarding these gains is the IPRA, thus their call for better, such as explicit, guarantees in the BBL of the IPRA's applicability inside the Bangsamoro territory. If there are really "more plus, plus" rights for the IPs in the proposed BBL, then it seems to me that it should not exclude the IPRA which necessarily comes with its provisions for delineation and titling of ancestral domains of the IPs.

Furthermore, there are already **comparative tables and studies of the IPRA and the proposed BBL that shows that the BBL does not offer more than the IPRA**. The four bundles of rights acknowledged by the IPRA, except the right to self-government and empowerment, are mentioned in some provisions of the proposed BBL. But these IPRA bundles of rights are diminished, altered or inexistent in the BBL.

**Even if the BBL does not make reference to IPRA and is not stricken down as unconstitutional to the extent of its being inconsistent with the IPRA, the IPRA would still apply in favor of IPs inside the new Bangsamoro entity.** The MILF might as well accept this, learn to live with it, and appear magnanimous rather than appear to be a reactionary/conservative obstacle to the full enjoyment of established IP rights. Or worse, "if push comes to shove," be shamed by a defeat in the SC for excluding the application of the IPRA in the Bangsamoro.

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## **Political Aspect**

**1. The MILF and the BBL also seriously risk substantial loss of political support for being anti-IPRA, for disregarding this "safety net" or "security blanket," if you will, of the IPs.** As the International Crisis Group (another ICG) has pointed out in its well-researched and incisive 22 November 2011 Asia Report No. 213 on "The Philippines: Indigenous Rights and the MILF Peace Process," "the Lumad matter" notwithstanding their relatively small numbers and lack of armed strength and even of political clout just by themselves. Says that ICG Report: "The MILF and the government, if they were willing, could use the peace process to address the historical injustices suffered by the Lumads as well as Moros. If the final agreement between the two parties were constructed and implemented on such basis, it would stand a better chance of achieving lasting peace. The MILF would stand to benefit, as it would prove the skeptics wrong who believe the rebels would run roughshod over minority rights." This is in fact a reasonable standard for Filipino public judgment of the MILF's ability to govern and worthiness for greater autonomy, which judgment would necessarily have bearing on public and Congressional support for the BBL.

Whatever sympathy for the Bangsamoro cause would be eroded by Filipino public perception that the BBL might be establishing a new autonomous political tyranny against the underdog Lumads. The MILF says that "The Maguindanaons and Tidurays have only one ancestral root; they are descendants of the two brothers, Mamalu and Tabunaway." In other words, the Maguindanaons and Tidurays are ancestral blood-brothers, that is perhaps somewhat like a "big brother" and "little brother" relationship. The historical and current experience of this relationship has, however, been (if I may use the term) "asymmetrical" in terms of power and influence, with the Bangsamoro seeing themselves "as a distinct dominant people," "being the first politically organized dominant occupants" with "original suzerain authority of their sultanates" in Mindanao and its adjacent islands "at the time of conquest or colonization." The Lumads, on the other hand, have narratives of oppression at the hands of the Moros, including past enslavement by its datus. IF the Filipino public, already with its long-standing anti-Muslim bias, were to perceive this kind of oppression or second-

class citizen treatment by the Moros of their own “little brother” Lumads as being perpetuated by the proposed BBL, then they and their elected representatives will likely not give it their support.

The Filipino public and Congress will likely also consider the position of the “little brother” Lumads vis-à-vis the proposed BBL advocated by their “big brother” Moros. **In other words, in practical terms, if a “little brother” will not support, and in fact even oppose, his own “big brother,” than why should I, a non-relative, support him too?** The MILF is still fortunate that the main Teduray organizations led by the Timuay Justice and Governance (TJG) and their support groups of peace advocates like the tri-people Mindanao Peoples’ Peace Movement (MPPM) are holding on to a position of supporting the Bangsamoro struggle for their right of self-determination, including if this takes the form of the BBL, BUT “it should not be at the cost of diminishing or diluting the inherent and inalienable rights of the IPs.” They ask Congress to enact a BBL “that is based on the recognition of human rights of all people, and Anchored on justice - a law that will correct historical marginalization and exclusion.” Otherwise, “If the BBL is illegally imposed upon the IPs, it is ethnocide and a violation of the law of nations embodied in UN conventions. If they agree to the BBL as drafted, it is suicide.” In other words, their current support still for the BBL effort may already to be tenuous. And I would not blame them if they withdraw that support if they perceive the BBL to be an instrument for “cultural genocide” for having “erased their [the Lumads’] identity as separate and distinct indigenous peoples” and that it also “divests the Lumads of their ancestral domains” (to use the words of SC Justice Carpio against the MOA-AD). Speaking for myself, **that - and not any other issue of constitutionality - is where I personally would also draw the line for continued critical support for the BBL.** If my own congressperson Rep. Leni Robredo asks me about it, this would be my advice.

Other Lumad groupings, like of the Erumanen ne Menuvu, even if supportive of Bangsamoro self-determination and the CAB, for now already want their ancestral domains excluded (like an advance “opt out”) from the proposed Bangsamoro entity “as it will damage our inherent and inalienable right to self-determination.” They say “we should not be part of the Bangsamoro identity because we have quite our own identity.... Among the issues we cannot compromise on are issues about our territory, because it is where all the other issues, like our culture and identity, revolve around.” It appears to me that only MILF and/or BBL guarantees on the applicability of the IPRA can get them on board the Bangsamoro “train” that does not “railroad” IP rights. But the concluding paragraph of above-said ICG Report says (if I may use the term) “more plus, plus” in terms of what is to be done and which I adopt for this Memo:

“As for the MILF, its leaders have taken the lessons of the failure of the MOA-AD to heart, but despite concerted efforts to reach out to the Lumad, mistrust remains. The negotiating panel could lessen the suspicions by tackling head on how their proposed sub-state would resolve the issue of overlapping ancestral domain claims or clarifying whether IPRA would apply. Consultations and promises of representation are not enough. **Lumad leaders know that the MILF views them as bit players in Mindanao geo-politics and until there is a shift in perspective, they are unlikely to be championing the Bangsamoro cause.**” (boldface type supplied) Let me repeat: “until there is a shift in perspective.”

IP support for the BBL, on one hand, and MILF guarantees for the IPRA, should be reciprocal (*kaliwaan*, in the vernacular). It cannot be as the MILF has often said that the tribes first need to support the Bangsamoro struggle; then after the peace settlement with the government, the MILF would support them.

**2. While the MILF needs all the political support it can get for the proposed BBL, it has perhaps unwittingly instead made counter-productive statements and actuations.** In the *Luwaran* editorial on “BBL and IPRA,” it speaks of “supporters and oppositors of the proposed law,”

and follows this by speaking of “the move of the oppositors to include the IPRA in the proposed BBL, which to its supporters is not necessary and relevant and will only create more problems rather than solutions.” Unfortunately, this makes “oppositors” out of otherwise supporters. The main Teduray organizations and the MPPM indeed move to include the IPRA in the BBL but they are still, at this juncture, more supporters rather than oppositors of the overall BBL effort. I for one am also a critical supporter of the BBL effort but I believe it is necessary and relevant to guarantee the applicability of the IPRA and that this will in fact avoid many problems for all concerned, including the MILF (to be discussed further below). The real oppositors to the proposed BBL like Rep. Celso Lobregat have no track record of IP rights advocacy but the *realpolitik* is that they will use all ammunition available to them, including the IPRA issue, to shoot down the proposed BBL. In fine, advocacy or not of guarantees for the IPRA should not be the criterion for determining “supporters and oppositors of the proposed law.” Politics is addition (“more plus, plus”), not subtraction (or exclusion). One of its basic tenets is do not make enemies out of those whom you cannot make friends - which can happen when you indiscriminately engage in knee-jerk paranoid labelling of even sincere and constructive “helpers” as instead “spoilers” and “evil whisperers.”

**3. There also is the counter-productive arrogance of armed struggle/armed power that can turn off many.** The *Luwaran* editorial on “The issue of ancestral domain in the Bangsamoro” justifies some sort of preferential option for the Moros by saying that “it was mostly Moro lives lost in the conflict, not other peoples’. The Moros paid for it dearly.” It is also as if to chide the IPs for now unjustly claiming benefits by “riding on the back” of the Moros, especially the MILF. But as leading IP and peace advocates, in particular Fr. Albert E. Alejo, S.J., have pointed out, “This requires the sincere and effective recognition of the Moro struggle for a more genuine autonomy.... But in this journey, the IPs must not be left behind. No, they are not free-riders in the formal peace process, and definitely not late-comers in the struggle. **They also lost many lives in a war that they did not even wage.**” (boldface type supplied) If you look at it, the IPs are not “riding on the back” of the Moros in order to claim benefits (like the “equitable share” entitlement of the IPs on the revenues from natural resources utilization, which the MILF highlights). Rather, **the IPs just want to preserve their gains** in IP rights that have been institutionalized in the IPRA, and for them this is no less than a matter of ethnic survival. As political/media commentator Bernie V. Lopez puts it, “The *lumad* are not envious of the goodies that the government will heap upon the Bangsamoro. They just want their inalienable rights respected.”

And as the MPPM said: “[The IPs’] assertion of their right to self-determination is as legitimate as the one the MILF is fighting for in behalf of the Bangsamoro people. As early as 2005, they have already actively and persistently engaged the GPH-MILF peace process by submitting their position papers and engaging in dialogues whoever sat in the two panels. Unfortunately, their voice remained in the margins as all their documents and position papers were treated as informal documents and not part of the talking points. It seems, the peaceful and democratic manner in which the IPs presented their assertion over the years has become their downfall as their views, positions and demands were not taken seriously.” While the Moro armed struggle has been occasioned by “historical injustices” and “legitimate grievances” that the Filipino general public does not adequately understand, there is an understandable public resentment at the special treatment and concessions being given to Moro rebels but not to peaceful law-abiding Filipino citizens, including the IPs.

**4. The MILF’s use of the Maguindanaon-Teduray ancestral relationship to support its one Bangsamoro ancestral domain discourse overlooks other Moro and Lumad tribes** in the proposed Bangsamoro territory to whom the analogy of that said relationship does not necessarily apply. The said discourse therefore **reflects a certain Maguindanaon-centric perspective that is not necessarily the best perspective for inclusiveness, including even just on the**

**Bangsamoro side of things**, especially with the Tausugs of the Sulu archipelago. I had already noted in previous papers, especially after the Sabah and Zamboanga standoffs both of 2013, that Bangsamoro unity, with MILF-MNLF unity as the litmus test, should already be treated as a goal itself of the peace process and no less than part of solving the Bangsamoro problem. And on the Lumad front, there is not only the Teduray but also the Lambangian, Dulangan Manobo, Erumanen ne Menuvu, B'laan, Higaonon, Badjao (who identify themselves as “non-Islamized”), and possibly also the T'boli, Obo-Manobo, Talaandig, and the Subanen, all around the fringes of the proposed Bangsamoro territory. By the way, the MILF should not delude itself that its Islamized IPs, especially those who have already joined the MILF, and who are thus “supporters” of the proposed BBL, represent the majority IPs and their interests. That was an old Misuari trick and delusion during his 1992-96 peace negotiations with the GRP.

**5. This brings us to a major argument of the MILF against the IPRA due to its necessary provisions for delineation and titling of ancestral domains of the IPs: that because of the mixed populations** (like that of the Maguindanaon and Teduray) in the proposed Bangsamoro territory, “an outright delineation cannot be possible.... drawing a line or delineating at any point especially in Maguindanao would create troubles not only between Moros and IPs but also IPs and IPs... besides there were already land titles issued which must be respected... Can we imagine the ill-effects of subdividing the Bangsamoro territory on the basis of tribes and clans?” First of all, **there are different ways of subdividing territory and these are not necessarily mutually exclusive or conflicting**. There are the political subdivisions of provinces, cities, municipalities, barangays AND autonomous regions, and then there are the IP ancestral domains that naturally overlap with those political subdivisions, there should be no big deal or problem about that. It might be said that the political subdivisions or entities connote political identity, while the ancestral domains connote ethnic identity. **It is the MILF making it a “major, major” problem, as if IP ancestral domains are incompatible with a new autonomous political entity when they are not.**

Almost everywhere there are mixed populations in varying percentages. **The false argument that there are mixed populations in IP ancestral domains can also be said of the proposed Bangsamoro territory.** It is more a function of the respective legal regimes and political leaderships in those respective domains/territories to deal with the situation of mixed populations. That is why even in the proposed BBL there are provisions for “Promotion of Unity” and what is in effect legal pluralism in the “Bangsamoro Justice System,” with appropriate mechanisms for settlement of disputes and for conflict of laws situations. Precisely, the political reality that we have to work with is a diversity of ethnic identities among which we seek to promote unity, thus the mantra of “unity in diversity.” This cannot be achieved by subsuming or erasing those identities, which would instead foment disunity and create more troubles and ill-effects. Solving the Bangsamoro problem should not result in creating a new Lumad problem.

The matter of expected problems of conflicts in the delineation of IP ancestral domains which may overlap in certain points or areas is **not a valid argument against delineation but rather an argument for better implementation**. The above-cited ICG Report has thus strongly recommended the provision of specific mechanisms for resolving overlapping ancestral domain claims. Ancestral domain delineation may indeed have its problems of overlapping claims, but it is the armed suppression of such delineation, resulting in the loss of lives like the two IPs recently killed by Moros, that create the bigger problems, including of aggravating tensions, mistrust and historical resentments.

Of course, more relevant to ancestral domains and lands, lands are also classified into public (agricultural, forest or timber, mineral lands, and national parks) and private land. **It is interesting**

**that the MILF points out that in Maguindanao “there were already land titles issued which must be respected,” sounding as if titled private land is more important than ancestral domains.** It begs the naughty question, is the MILF protecting certain private properties? But of course “vested property rights” will as a rule be respected within the ancestral domains just as the BBL would mandate within the Bangsamoro territory.

6. This particular point of *realpolitik* bears repeating: **the real oppositors to the proposed BBL like Rep. Celso Lobregat, who have no track record of IP rights advocacy, including their legal luminaries, will use all ammunition available to them, including the IPRA issue, to shoot down the proposed BBL.** The best defense for that particular issue is to **pull the rug from under it by making it a non-issue** which would happen IF there are BBL guarantees on the applicability of the IPRA, whether in the text of the BBL or in its legislative record. This is not the issue on which the MILF should stake or make its last stand on the BBL, for legal, political and moral reasons such as those discussed in this Memo. There are more than enough other dangerous (including unconstitutionality) anti-BBL issues that have to be surmounted. The conventional wisdom of the art of war is to choose one’s battles and not fight on too many fronts.

7. There is national *realpolitik*, and there is also international *realpolitik*. In fact, the latter has been quite helpful for the overall Mindanao peace process, especially the GPH-MILF peace negotiations. Strong and growing international support is one of the main positive factors and forces for the MILF peace process. The MILF itself obviously places a premium on international support and legitimacy. But **the MILF now risks undermining that international support and legitimacy because of a perception that it is riding roughshod over IP rights.** The international support network for IP rights is also formidable and includes UN mechanisms like the UN Special Rapporteur on IPs. Can you imagine the ill effects to the MILF if cases against it are brought to the UN for serious violations of IP rights?

## Moral Aspect

1. It has been said that **“The Golden Rule” is the basic law, all the rest is commentary.** In Islam, the version of this Rule is “No one of you is a believer until he desires for his brother that which he desires for himself” (The Prophet Muhammad, p.b.u.h., *Hadith*). Several applications of this Rule or its converse (“Do not do unto others what you do not want others to do unto you”) immediately come to mind regarding the issue at hand. First, the MILF’s assertion for one Bangsamoro ancestral domain as a national identity is like the same process of assertion of being “Filipino” by temporarily relativizing or subsuming the regional identities in favor of declaring independence from a colonial power. That was followed however by the “endless tyranny” of Filipino colonialism over the Bangsamoro. Is this now being replicated by some form of Bangsamoro colonialism over the Lumads? In other words, is the Bangsamoro going to do to the Lumads what the Filipinos have long done to Bangsamoro? Allah forbid that this happens. It would be like one becoming the mirror image of the enemy that ones hates.

Second example: The MILF has successfully sought from the GPH for the Bangsamoro an **“Asymmetric Relationship” and “Parity of Esteem”** with the Philippine Republic. Can the MILF not also grant these same “inter-governmental relations” with the tribal governments of the IPs? The MILF invokes the example of the old sultanates’ treaties with foreign powers to show historical sovereign parity. Can it not give the same parity of treatment to the ancient traditional peace pacts

between Moros and Lumads? Can the “little brother” Lumads finally get some “parity of esteem” from their “big brother” Moros?

Third example: Also relevant to parity of esteem, the MILF defines the Bangsamoro problem by “what we perceive to be the Bangsamoro problem.” The Bangsamoro people know best what is their problem and what is the solution to this problem. In like manner, the MILF should also **grant to the IPs that they know what is best for IP rights**. For them, “The IPRA is by far the best legislation for the affected tribes...” This despite the problems in the law and its seriously flawed implementation. This despite the MILF’s critique of it as “tribal and clannish in application” and “merely topsoil or surface-oriented and never on the revenues generated.”

2. The MILF and many sectors in the Philippines, including the CPP, all seem to have an agenda for the coming Papal visit. The MILF as early as last October announced its plan to write a letter to Pope Francis to say something about the GPH-MILF political settlement that should finally bring peace and prosperity to the conflict-ridden parts of Mindanao. The MILF should not be surprised if the Pope says something like **“Verily I say unto you, Inasmuch as ye have done it unto one of the least of these my brethren [the Lumad], ye have done it unto me.”** (*Matthew 25:40*) The Lumad are still “the least of our brethren” or, as *Luwaran* itself puts it, “still the most marginalized sectors in this country.” A previous Pope, John Paul II, once said that **a nation is judged by how it treats its ethnic minority**. So, as the Filipino nation is judged by how it treats its Moro minority, so will the Moro nation be judged by how it treats its Lumad minority.

Still on “the least of our brethren” discourse, there is the impression that in the MILF’s defense of the proposed BBL, the MILF is at times more protective or assuring of “vested property rights” like land titles rather than IP rights like ancestral domains. Relatedly, the MILF has said so much against the delineation of the Teduray and Lambangian ancestral domains but has hardly said anything about mining exploration activities taking place there last year. The **moral ascendancy** of a revolutionary organization is diminished when it is seen as catering not to “the least of our brethren,” but rather to those who have more in life, in terms of wealth and power.

3. Finally, doing right by “the least of our brethren” Lumad would be faithful to the Islamic principle of ***Al-amro bil ma’rouf wan-nahyu anil munkar*** (“enjoining what is right and forbidding what is wrong”), a general principle sought to be enshrined in the BBL. I pray that the MILF leadership give this Memo the same kind of serious concern and thought that went into it, with the hope that the leadership reconsider its position, so that it would now allow, if not itself move, for guarantees of IP gains, including the IPRA, in the passage of the BBL. *Sukran*. — #

**Judge Soliman M. Santos, Jr.**

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**P.S.**

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*Thinking Beyond the GRP-MILF MOA-AD* (AFRIM, 2011); and *Federalism and Cha-Cha for Peace* (Institute for Autonomy and Governance, 2016).